

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRIUMPH FOODS, LLC, CHRISTENSEN
FARMS MIDWEST, LLC, THE HANOR
COMPANY OF WISCONSIN, LLC, NEW
FASHION PORK, LLP, EICHELBERGER
FARMS, INC., and ALLIED PRODUCERS'
COOPERATIVE, individually and on behalf of its
members,

Plaintiff,

v.

ANDREA JOY CAMPBELL, in her official
capacity as Attorney General of Massachusetts, and
ASHLEY RANDLE, in her official capacity as
Massachusetts Commissioner of Agriculture,

Defendants.

CIVIL ACTION
NO. 1:23-cv-11671-WGY

MOTION TO SET BRIEFING SCHEDULE AND REQUEST FOR HEARING ON
MOTION TO DISMISS AND TO
CONTINUE PROCEEDINGS UNDER FED. R. CIVIL P. 65(A)(2)

For the reasons described in the Joint Status Report filed today (ECF No. 45), Defendants hereby move for entry of a scheduling order incorporating the following elements, as set forth in the proposed order attached hereto as Exhibit A:

1. Defendants will file their Motion to Dismiss the complaint in its entirety by October 2, 2023, the current deadline by which Defendants must file a responsive pleading in this action;
2. Plaintiffs will file their Opposition to the Motion by October 16, 2023, in accordance with District of Massachusetts Local Rule 7.1(b)(2);

3. Defendants will file their Motion for Leave to file a Reply and Proposed Reply, if any, in support of their Motion to Dismiss by October 23, 2023;
4. The Court set a date for a hearing on the Motion to Dismiss at the Court's earliest convenience between the dates of October 24th and November 1st.
5. The Court set a date for a Scheduling Conference in the event the Motion to Dismiss is denied in whole or in part at the Court's earliest convenience.

In addition, Defendants request that the further hearing set for October 10, 2023, be continued. Defendants do not object to proceeding under Rule 65 of the Rules of Civil Procedure. As the Court acknowledged, however, Defendants are not required to waive their rights under the Rules, including the right to move to dismiss and the right to go through a discovery phase, in order to proceed under Rule 65.

Defendants have concluded that they cannot agree to proceed on a Case Stated basis on October 10, 2023. If, as Plaintiffs contend in the Joint Status Report, the Court has in fact set the case down for a trial commencing October 10, 2023 regardless of whether the Defendants agree to a Case Stated, the Defendants further move that the Court continue trial until the Motion to Dismiss has been fully briefed and heard- and, should the Motion be denied, that the Parties appear for a scheduling conference to enable Defendants to conduct discovery under the Rules of Civil Procedure before trial. See Fed. R. Civ. Proc. 26-37.

Advancing the trial under Rule 65 does not obviate the need for a pre-trial conference under Rule 16. Rule 16 of the Federal Rules of Civil Procedure authorizes the court to order the attorneys to appear for a pretrial conference for the purposes of "expediting disposition of the action," "discouraging wasteful pretrial activities," and "improving the quality of the trial through more thorough preparation." Fed. R. Civ. P. 16(a)(1), (3), (4); see also Local Rule

16.1(a). Under Rule 16, the court “must issue” a scheduling order. Local Rule 16.1(b). The order issues only “after receiving the parties' report under Rule 26(f)” or “after consulting with the parties’ attorneys . . . at a scheduling conference.” Fed. R. Civ. P. 16(b)(1). Thus, proceedings under Rule 16 and Rule 65 are intended to expedite proceedings and work in harmony.

WHEREFORE, the Defendants respectfully request that the Court enter a scheduling order on Defendants’ forthcoming motion to dismiss in the form attached as Exhibit A, and to continue the October 10th hearing.

Respectfully submitted,

ANDREA JOY CAMPBELL, in her official
capacity as Attorney General of Massachusetts, and
ASHLEY RANDLE, in her official capacity as
Commissioner of the Massachusetts Department of
Agricultural Resources,

By their attorneys,

/s/ Vanessa A. Arslanian

Grace Gohlke, BBO No. 704218

Vanessa A. Arslanian, BBO No. 688099

Assistant Attorneys General

Massachusetts Office of the Attorney General

Constitutional and Administrative Law Division

One Ashburton Place

Boston, MA 02108

617-963-2527

grace.gohlke@mass.gov

617-963-2107

vanessa.arslanian@mass.gov

Maryanne Reynolds, BBO No. 627127

Assistant Attorney General

Massachusetts Office of the Attorney General

Constitutional and Administrative Law Division

10 Mechanic Street, Suite 301

Worcester, MA 01608

774-214-4407

maryanne.reynolds@mass.gov

Dated: September 14, 2023

LOCAL RULE 7.1 CERTIFICATION

I hereby certify that I spoke with counsel for the Plaintiffs on September 14, 2023, at 10:30 a.m. ET, to confer on this motion, in compliance with District of Massachusetts Local Rule 7.1(a)(2). Counsel for the Plaintiffs indicated they would oppose the Motion.

/s/ Vanessa A. Arslanian
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ Vanessa A. Arslanian
Assistant Attorney General

Dated: September 14, 2023